



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/392,865	09/09/99	KITAMURA	005702-20035

MM21/0306

WILLIAM H. WRIGHT, ESQ.  
HOGAN & HARTSON, L.L.P.  
BILTMORE TOWER  
500 SOUTH GRAND AVENUE, SUITE 1900  
LOS ANGELES CA 90071-4164

EXAMINER  
TRAN, T

ART UNIT 2811	PAPER NUMBER
------------------	--------------

DATE MAILED: 03/06/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**

Application No.

09/392,865

Applicant(s)

KITAMURA ET AL.

Examiner

Thien F Tran

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 January 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 11 January 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (see NOTE below);
  - (b) ☐ they raise the issue of new matter. (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☐ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 5-7, 16 and 17.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
11. ☒ Other: Notice of References Cited, PTO-892

Continuation of 3. NOTE: The proposed new limitations in claim 17 require further consideration. Also, they raise the new issue of 112, 2nd paragraph.

Continuation of 6. NOTE:


Applicant's arguments filed on 01/11/2001 have been fully considered but they are not persuasive. The examiner maintains the rejections of claims.

Applicant argues that the office action's rejection over the Noda is not based on the prior art that suggests using silicon nitride instead of PSG in the Noda's structure, therefore, the rejection should be withdrawn. Since the examiner relies on "well known" prior art to support an obviousness rejection, the examiner should not be obliged to spend time to produce documentary proof. If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state. In re Malcolm, 129 F.2d 529, 54 USPQ 235 (CCPA 1942). Also, see MPEP 2144.03.

Furthermore, Applicant did not timely traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Although, Applicant never challenges the well known statement or requests the examiner to provide prior arts that suggest using silicon nitride spacers, the examiner is glad to include with this office action the prior arts to support an obviousness rejection. Chau et al. reference discloses other materials suitable for constructing spacers may be used in place of or in conjunction with the oxide spacer including nitride, BSG and PSG (col. 9, lines 31-37).

Bracchitta et al. discloses LPCVD nitride being used as spacers over the oxide 22 (Figs. 5-6); and Reference U (TDB-ACC-NO: NN8801295) also discloses LPCVD nitride being used as spacers 23 over the oxide 22 (see Fig. 2). It would have been obvious to one skilled in the art to substitute the PSG material of the side walls (spacers) 26 of Noda with the LPCVD nitride material as taught by Chau et al. or Bracchitta et al. or Reference U so the nitride spacers are in intimate contact with the oxide covered gate and an effective contamination barrier is formed to block mobile ions from invading the gate region.

  
Sara Crane  
Primary Examiner